IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5163 of 1985

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SAPARIA JIKUBHAI RANCHHODBHAI
Versus
DISTRICT HEALTH OFFICER

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Appearance :
MR PH PATHAK for Petitioner.
MR JD AJMERA for Respondents.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 31/07/2006

ORAL JUDGMENT

By filing this petition, the petitioner has prayed for a declaration that the oral termination order dated 08.01.82 passed against the petitioner is illegal and to treat the petitioner as continuous in service from 01.02.80.

As per the averments in paragraph 1 of the petition, the petitioner was initially appointed on a clear vacancy as a Peon in the office of respondent No. 2. The petitioner was given tenure appointment order from time to time – the first of which was given on 21.01.80 [Annexure 'A'], which was extended subsequently. However, by an oral termination he was sought to be relieved from service. It is the aforesaid action which is challenged in this petition.

At the time of admitting this petition, though interim relief was refused, liberty was granted to the respondents to continue the petitioner in service till regularly recruited candidates become available.

The petition is resisted by filing reply pointing out that the petitioner was appointed purely as a stop gap arrangement and since he is son of a retired employee of the Institution, he was given such temporary appointment in order to meet with the emergency work of the department.

During the pendency of this petition, there are subsequent developments. After making appointment on regular basis, the petitioner was again removed by order dated 10.04.86. The petitioner raised an Industrial Dispute challenging the said termination and the said Reference was registered as Reference No. 1747 of 1986. It seems that the

Labour Court declared an award in favour of the petitioner on 4.1.1990. That award was declared exparte as the Department had not appeared before the Labour Court. The Department thereafter preferred Special Civil Application No. 6185 of 1990 which was dismissed by the learned Single Judge on 05.09.90 with a liberty to the Department to prefer Review Application. The Department thereafter preferred a Review Application before the Labour Court but the said application was rejected by the Labour Court on 20.08.96. The said order was again challenged by filing SCA No. 7735/96. The learned Single Judge granted stay regarding backwages and refused interim relief regarding reinstatement. Again, the aforesaid order was challenged by filing LPA No. 1327/97, which was dismissed on 19.01.98. Subsequently, learned Single Judge rejected the Special Civil Application by order dated 07.10.98. That order was again challenged by way of LPA No. 1430 of 1998. These factual aspects are incorporated in the judgment and order dated 08.08.05 passed by the Division Bench of this Court in LPA No. 1430 of 1998. The Division Bench allowed the application filed by the appellant for review and set aside the award dated 04.01.90 in Reference No. 1747 of 1986 and ultimately directed the parties to appear before the Labour Court on 12th September 2005. The Labour Court was directed to decide the main Reference on merits within four months from the date of submission of the Written Statement by the appellant of the LPA , i.e. the Department. Mr. Ajmera, learned advocate for the respondent Department submitted that the whole matter is now before the Labour Court.

In my view, as during pendency of this petition a fresh order of termination is passed in view of regular recruitment

made by the Department and as the matter is at large before the Labour Court, this petition has become infructuous. Now, no order is required to be passed in this petition in view of the subsequent termination which is pending before the industrial forum. The rights of the parties shall be governed by the aforesaid Reference as well as award of the Labour Court. This petition is accordingly required to be disposed of in view of the subsequent developments as stated hereinabove.

In the result, this petition is disposed of as infructuous. The rights of the parties shall be governed by the aforesaid Reference as well as award of the Labour Court. Rule discharged. No order as to costs.

Since the Division Bench has already directed for expeditious disposal of the Reference, the Labour Court shall comply with the said direction, if the same is not disposed of so far. Learned advocate Mr. Ajmera states that the R & P called for by this Court has not been returned to the Labour Court. If that be so, the Registry is directed to **immediately** return the R & P to the Labour Court – **without any further delay.**

[P. B. MAJMUDAR, J.]

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